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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,077	10/26/2001	Tod Turner	107453-59476	9530

7066 7590 11/04/2009  
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EXAMINER
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ART UNIT	PAPER NUMBER
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2456

MAIL DATE	DELIVERY MODE
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11/04/2009

PAPER

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* TOD TURNER, BRUCE BEQUETTE,  
WADE LANCE, and BRYAN SCHREMP

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Appeal 2009-004528  
Application 10/015,077  
Technology Center 2400

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Decided: November 4, 2009

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Before JOHN C. MARTIN, ROBERT E. NAPPI, and THOMAS S. HAHN,  
*Administrative Patent Judges.*

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 6(b) of the rejection of claims 1 through 93.

We affirm.

### INVENTION

The invention is directed to a method for facilitating the sharing of applications running in a hosted environment. The method allows users of a network access device to use instant messages to provide the information necessary to share the application running in a hosted environment. See pages 8 and 9 of Appellants' Specification. Claim 1 is reproduced below:

1. A method for communicating hosted application information to allow sharing of a hosted application session, comprising the steps of instantiating a first instant messaging client on a first network access device, said first network access device being remote from a hosted application server, said first network access device participating in a hosted network application;  
establishing a communications path from the first network access device to a second network access device, said second network access device running a second instant messaging client, said second instant messaging client being communicably connected to said first instant messaging client via a network, said communications path for communicating information using an instant messaging protocol between the first and second network access devices; and  
using an instant messaging protocol to communicate hosted application information to the second network access device, said information comprising parameters for sharing the hosted application session being participated in by the first network access device.

### REFERENCES

Danneels	US 5,524,110	Jun 4, 1996
Salesky	US 6,343,313 B1	Jan. 29, 2002

Gudjonsson	US 6,564,261 B1	May 13, 2003
Slavin	US 6,675,193 B1	Jan. 6, 2004

### REJECTIONS AT ISSUE

The Examiner has rejected claims 1, 5, 6, 16, 17, 20, 21, 23, 24, 34 through 36, 41, 42, 44, and 46 through 49 under 35 U.S.C. § 102(e) as being anticipated by Gudjonsson. The Examiner's rejection is on pages 3 through 7 of the Answer.<sup>1</sup>

The Examiner has rejected claims 7 through 10, 13, through 15, 22, 25 through 28, 31 through 33, 40, 45, 52, 54 through 68, 70 through 83, and 88 through 93 under 35 U.S.C. § 103(a) as being unpatentable over Gudjonsson in view of Salesky. The Examiner's rejection is on pages 7 through 16 of the Answer.

The Examiner has rejected claims 2 through 4, 18, 19, 37, 38, 50, and 51 under 35 U.S.C. § 103(a) as being unpatentable over Gudjonsson in view of Slavin. The Examiner's rejection is on pages 16 through 18 of the Answer.

The Examiner has rejected claims 11, 12, 29, 30, 43, 53, 69 and 84 under 35 U.S.C. § 103(a) as being unpatentable over Gudjonsson in view of Salesky and Danneels. The Examiner's rejection is on pages 18 through 20 of the Answer.

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<sup>1</sup> Throughout the opinion we refer to the Answer mailed May 12, 2008.

ISSUE

*Claims 1, 5, 6, 16, 17, 20, 21, 23, 24, 34 through 36, 39, 41, 42, 44, and 46 through 49*

Appellants argue on pages 14 through 18 of the Brief<sup>2</sup> that the Examiner's rejection of claim 1 is in error. Appellants argue on page 15 of the Brief that claim 1<sup>3</sup> recites that a first network access device is participating in a hosted application when the first instant messaging client is instantiated. Appellants additionally assert that claim 1 requires that the instant messaging communicates information and parameters associated with the hosted application session to be shared. Appellants argue that Gudjonsson teaches a system to improve instant messaging services by adding immediate services and does not use instant messaging protocol for information relating to hosted application information. Brief 16. Appellants argue that Gudjonsson's instant messaging service, which may be considered a hosted application, does not meet the claimed hosted application as it "is logically impossible, since the same action would then also have to be 'instantiating a first instant message client,' which does not occur until after the first network access device is already participating in a shared application session." Brief 17.

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<sup>2</sup> Throughout the opinion we refer to the Brief dated December 10, 2007.

<sup>3</sup> Appellants' arguments group claims 1, 5, 6, 16, 17, 20 through 21, 23, 24, 34 through 36, 39, 41, 42, 44, and 46 through 49. We select claim 1 as representative of the group.

Thus, Appellants' contentions directed to the rejection of claim 1 present us with the issue: have Appellants shown that the Examiner erred in determining that Gudjonsson teaches instantiating an instant messaging client on a device which is participating in a hosted network application, where the information in the instant message comprises parameters for sharing the hosted application session being participated in by the first network device?

*Claims 7 through 10, 13, through 15, 22, 25 through 28, 31 through 33, 40, 45, 52, 54 through 68, 70 through 83, and 88 through 93*

Appellants argue that the rejection of these claims is in error on pages 19 through 21 of the Brief. Appellants' arguments directed to these claims present us with the same issue discussed above with respect to claim 1.

We note that Appellants also argue that the additional teaching of Salesky does not make up for the deficiencies in the rejection of claim 1 based upon Gudjonsson. We do not reach the issues raised by this argument because as discussed *infra* our holding with respect to the rejection of claim 1 is dispositive of any issues raised by these arguments.

*Claims 2 through 4, 18, 19, 37, 38, 50 and 51*

Appellants argue that the rejection of these claims is in error on pages 21 and 22 of the Brief. Appellants' arguments directed to these claims present us with the same issue discussed above with respect to claim 1.

We note that Appellants also argue that the additional teaching of Slavin does not make up for the deficiencies in the rejection of claim 1 based upon Gudjonsson. We do not reach the issues raised by this argument

because as discussed *infra* our holding with respect to the rejection of claim 1 is dispositive of any issues raised by these arguments.

*Claims 11, 12, 29, 30, 43, 53, 69 and 84 through 87*

Appellants argue that the rejection of these claims is in error on pages 22 and 23 of the Brief. Appellants' arguments directed to these claims present us with the same issue discussed above with respect to claim 1.

We note that Appellants also argue that the additional teaching of Danneels does not make up for the deficiencies in the rejection of claim 1 based upon Gudjonsson. We do not reach the issues raised by this argument because as discussed *infra* our holding with respect to the rejection of claim 1 is dispositive of any issues raised by these arguments.

#### PRINCIPLES OF LAW

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. *RCA Corp. v. Appl. Dig. Data Sys., Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984); *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554 (Fed. Cir. 1983).

#### FINDINGS OF FACT

1. Appellants define a hosted application as “an application being executed on a host and accessed by a remote Network Access Device.” Specification 3.

2. Gudjonsson teaches a system which provides a secure way of establishing communications sessions with other users. Abstract.
3. Gudjonsson teaches that two users with network access devices can communicate using services such as a video conference (which is a hosted application that is set up via a video server remote from the network access device). Col. 7, ll. 38-50.
4. The user initiating the communication first sets up a communications session (e.g., video conference), then sends an invitation to other users to join the session. Gudjonsson col. 25, ll. 21-41.
5. The invitation to join the conference contains directions on how the invitee can connect to the conference. The user instantiating the communication can invite several people. Gudjonsson, col. 27, l. 62 – col. 8, l. 7.
6. The system does not limit the form of the invitation which can include text messages. Gudjonsson, col. 13, ll. 5-11.

## ANALYSIS

*Claims 1, 5, 6, 16, 17, 20, 21, 23, 24, 34 through 36, 41, 42, 44 and 46 through 49*

Appellants have not persuaded us that the Examiner erred in finding that Gudjonsson teaches instantiating an instant messaging client on a device which is participating in a hosted network application as recited in claim 1. Claim 1 recites that “instantiating a first instant messaging client on a first network access device ... said first network access device participating in a hosted network application.” Claim 1 further recites establishing



communication to a second network access device and using the instant messaging protocol to communicate information to the second device where the “information compris[es] parameters for sharing the hosted application session being participated in by the first network access device.” Thus, the scope of the claim includes that there are two network access devices the first participating in a hosted network application and instantiating an instant message which provides the information for sharing the hosted network application with the second network access device.

The Examiner states:

Gudjonsson teaches a session service that creates a session (text or video conference) for a client and allows that client to send invitations which contain directions about how to connect to the session (Column 27, line 62 - Column 28, line 8). The conference ability of Gudjonsson is further described in Column 33, line 49 - Column 34, line 7, which teaches that the conference is initiated by a first client, but are hosted by the session manager, not the client or the instant message client. The second client is notified and connects to the hosted applications through invitations sent by the first client (Column 27, line 62 - Column 28, line 8). The invitation process is described in Column 9, line 5 – Column 10, line 46. Gudjonsson further describes the invitation process in Column 13, lines 5 - 18 as encompassing many types of communication types including sending text messages to the client to set up a communication session.

Answer 21.

We concur with the Examiner’s findings as they are supported by ample evidence. Gudjonsson teaches that a user can set up a video conference (a session using a hosted application), and then send text message invitations to other users which provide the information necessary for the user to join the conference. Facts 2 through 6. Appellants’ arguments on page 17 of Brief, that the claim is not met by Gudjonsson as

the instant message client cannot be the hosted application, are not persuasive. The Examiner has found that the Gudjonsson video conference meets the claimed network hosted application, and that the invitation, which may be sent by instant message, provides the information necessary to set up the communication. Appellants' arguments have not addressed these findings by the Examiner and their application to the claimed invention. As such, Appellants have not persuaded us that the Examiner erred in finding that Gudjonsson teaches the limitations of claim 1. Accordingly, we sustain the rejection of claims 1, 5, 6, 16, 17, 20, 21, 23, 24, 34 through 36, 39, 41, 42, 44, and 46 through 49.

*Rejections of claims 2 through 4, 7 through 15, 18, 19, 22, 25 through 33, 37, 38, 40, 43, 45, and 50 through 93.*

As discussed above, Appellants' arguments with respect to the rejections of these claims present us with the same issue as discussed above with respect to claim 1. Further Appellants' arguments assert that the additional teachings of Salesky or Slavin or Danneels do not make up for the deficiencies in the rejection of claim 1. These arguments have not persuaded of error in the Examiner's rejections because as discussed above we find no error in the rejection of claim 1.

## CONCLUSION

Appellants have not persuaded us of error in the Examiner's rejections of claims 1 through 93.

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ORDER

The decision of the Examiner to reject claims 1 through 93 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD

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